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4701 WILLARD AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 656-4068

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PROGRAM Nightline

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SUBJECT Abuses of Power and Official Secrets Laws

TED KOPPEL: Good evening. I'm Ted Koppel, and this is Nightline.

The charge is abuse of power in cases that range from illegal government wire taps to outright violence. But the TV documentary that makes those charges can't even be seen in England, the country where the abuses allegedly take place, because it may violate Britain's Official Secrets Act. There are those who say we need similar national security laws in this country.

It is a complaint common to all U. S. administrations in modern times: too many leaks of too much classified information to too many reporters. If only, one sometimes hears government officials complaining wistfully -- if only we had what the British have, an Official Secrets Act.

A little later in this broadcast we'll hear from a former CIA official who takes that position and from a New York Times' columnist, who, not surprisingly, rejects it. But first, a look at how that Official Secrets Act is applied. You're about to see part of a British documentary which was produced for broadcast in Great Britain, but has never been aired because the television network was advised by its lawyers that transmission would have constituted a criminal act.

Nightline correspondent Jeff Greenfield will explain what the controversy is about.

NARRATOR: Every democratic society needs a police force. It also needs security services. In this country we

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have two internal security agencies, MI-5 and the Police Special Branch. Various rules exist which draw lines around what MI-5 and the Special Branch may and may not do. This is a film about how and where and sometimes why they cross those lines.

JEFF GREENFIELD: The tale pieced together by the British documentary series "20/20 Vision" is a startling one. The one hour program charges branches of the police and intelligence services with repeated abuses of power.

It charges that the telephones of labor leaders were wire-tapped.

It charges that police infiltrated the right-wing National Front with agents who themselves committed violent acts.

The documentary also charges wholesale surveillance against members of the Campaign for Nuclear Disarmament.

UNIDENTIFIED MAN: We will translate these measures of nuclear disarmament into practical action.

GREENFIELD: A charge levelled by Cathy Messeter, who quit MI-5 after fourteen years of intelligence work.

CATHY MESSETER: You couldn't just concentrate on subversive elements. You have to be able to answer questions on the non-subversive elements. And the whole thing sort of began to sort of grow out into a very gray area.

GREENFIELD: The charges have been front page news in the British papers and have filled the evening newscasts.

NEWSCASTER: The allegations that MI-5 tapped the phones of trade unionists and civil liberty leaders continue to rumble on.

GREENFIELD: The most curious twist to this story is that this British documentary hasn't been seen in Britain. It was banned from the air by the Independent Broadcast Authority, which feared that it might violate Britain's Official Secrets Act. That 74 year old law, aimed both at government officials and at journalists, imposes tough penalties for leaks that, in America, are considered part and parcel of everyday journalistic life.

Under Britain's law, government employees are forbidden from communicating official information to any unauthorized person, including a journalist. As a former intelligence worker, Miss Messeter would still come under that law, as would a television reporter. That potential legal violation was enough

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to persuade the British commercial network to ban the documentary.

In the United States, by contrast, no law forbids the leaking or reporting of the fact that former FBI Director Hoover ordered the tapping of Martin Luther King's telephone.

UNIDENTIFIED REPORTER: And lift-off. Lift-off of the shuttle, the first flight totally dedicated to a Department of Defense mission.

GREENFIELD: Even the payload of a top secret military space shuttle mission can be discussed openly by the press, without fear of legal retribution. For Harold Evans, who's worked as an editor on both sides of the Atlantic, the British Official Secrets Act is a clear danger to the press.

HAROLD EVANS: Here we have a case where journalists, trade unionists, politicians are having their telephones tapped. This is disclosed by an official, and the television authorities have refused to allow that information to reach the British public.

So these ludicrous and antique series of secrecy measures in Britain are having a very serious effect on people's liberties to know how they're governed.

GREENFIELD: In the most recent use of the British Official Secrets Act, mid-level civil servant Clyde Ponting was brought to trial for disclosing to a member of Parliament details about the sinking of the Argentine warship Belgrano during the Falklands war. He was acquitted.

In a rare case when the United States government tried to stop publication of a story, as in the 1971 Pentagon Papers case, the courts have consistently said no.

ANTHONY RUSSO: I think there's no question but that the American people have a right to know what's in the Pentagon papers.

GREENFIELD: And attempts to prosecute the Pentagon papers leakers, Anthony Russo and Daniel Ellsberg, under the 1917 Espionage Act, were thrown out of court because of government misconduct.

Still to come is the espionage prosecution of naval intelligence employee Samuel Morrison for leaking satellite photos to a military publication. And Reagan administration efforts to impose lifetime censorship and lie detector tests on a wide range of government workers in an attempt to keep secrets

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has been blocked by congressional objections.

Michael Ledeen, former aide to Secretary of State Alexander Haig, is skeptical about an American Official Secrets Act, but says the problem of widespread leaking is very serious.

MICHAEL LEDEEN: The fact is that a constant leak of delicate national security information makes good foreign policy impossible, first because on the intelligence side resources dry up. People don't like to see delicate information that they have provided the American government in the papers. And sometimes it may cost them their lives.

But secondly, and a fact that most people generally forget, is that without candid conversations, good policy can't even be formulated, let alone conducted.

GREENFIELD: Clearly, some secrets must be kept, but which ones? Britain's Official Secrets Act presumes that the government can make that decision, not an unelected media. America's First Amendment takes a different tact, reflecting the fear of a government grown too powerful. So which interests are more directly threatened, the British people's right to know or the American government's right to protect itself?

This is Jeff Greenfield for Nightline in New York.

KOPPEL: Later we'll talk with George Carver, a former CIA official who believes the U. S. could be well served by having its own Official Secrets Act, and by New York Times' columnist Anthony Lewis, who considers the British Official Secrets Act to be one of the most thoroughly discredited laws in the Western world.

But first, when we come back, we'll be joined by British journalist Duncan Campbell, one of those named in the British documentary as having been placed under surveillance.

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KOPPEL: With us now live from our London Bureau, Duncan Campbell, staff writer for the British magazine, the New Statesman. A writer on national security issues, Mr. Campbell was arrested and prosecuted some eight years ago under the British Official Secrets Act, although the case was eventually dropped.

Tell me, Mr. Campbell, the information that we just learned through those snippets from the documentary, are they generally known to the British public?

DUNCAN CAMPBELL: The suspicions that this kind of

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activity has gone on over a number of years is familiar to everyone who has been involved and who's been named. But it's the first time that someone has really come forward with very hard evidence in this area.

KOPPEL: So there has been no published information or broadcast information in Great Britain to the effect that labor leaders have had their phones tapped, that MI-5 operatives have been infiltrating right-wing political groups. Is that correct?

CAMPBELL: It's a completely novel development in British politics that members of this desperately secret organization speak out in public at all. It's never happened until the last twelve months, and now, in fact, there's been four former members of the security service, MI-5, who talked about their illegal activities at length. Three of these people have done so perfectly publicly.

KOPPEL: Now that it has been broadcast -- I know, for example, the Israelis take the position there can be secret information which once it is published in a foreign newspaper or broadcast on a foreign network can then be reported again in Israel.

Is that the same thing in Great Britain?

CAMPBELL: The technicalities of the law would not be got around by the fact that you broadcast it in the United States. But in fact, the technicalities of the law are really a matter for the absurd behavior of the television authority and its lawyers. In fact, the film is being shown repeatedly in London and will shortly go into cinema release.

KOPPEL: Shown where in London?

CAMPBELL: It's been shown to MPs, journalists and others, and it's planned for cinema release I think in two weeks' time.

KOPPEL: This is now -- the Official Secrets Act is, as Jeff Greenfield pointed out, an act which has been on the books since 1911. Has there been any thought given to modernizing it?

CAMPBELL: It's been under review, and each government that has come in for the last 15 years has promised to change it, promised to reform it. The one reform that was ever introduced some six years ago was going to have the effect that you could never even talk about Soviet spying and rapidly abandoned. Governments of whatever party have not kept faith with the people when they've been elected on promises of reforming the secrets' laws.

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KOPPEL: There is a term much bandied about in this country, Mr. Campbell, "chilling effect." It was used with regard to the Westmoreland trial. It was used with regard to the Sharon trial. I would assume that it would have a chilling effect on me if I was prosecuted, as you were. Did it have on you? Does it have on your colleagues?

CAMPBELL: Well, as far as the chilling effect is concerned, we've been in the ice age for decades around here. But I think the fact is that the law is absurd, our Official Secrets Act. It's a law that officially prohibits disclosure of matters of how much tea and cake is eaten each morning, and that sort of thing. A law so wide, that's so widely drawn that it can hardly ever be used is a law that's fallen into disuse. And day in and day out, journalists break this law. The Broadcasting Authority, whose pusillanimous denials and refusals to publish, have themselves many times in the last few years published material in contravention of the act.

KOPPEL: But is that not a matter -- is that not a matter, Mr. Campbell, that's ultimately up to the government then to decide whether it wants to prosecute? In other words, it could, if it wished, prosecute in each of these incidents?

CAMPBELL: It could, but it would make a public fool of itself, as it has just done with the senior civil servant in the Ministry of Defense.

KOPPEL: And yet having made a fool of itself, as you put it, one would think that they would be all too inclined to change the law, and yet you say it hasn't happened? And you don't seem to suggest that it's likely to happen very soon?

CAMPBELL: It's not likely to happen under this government. And I would fear any change in the law made under Mrs. Thatcher's leadership. I would much rather stick with the very bad law, which, in theory, keeps me at risk every time. But when people see there's a public interest in the disclosures that I or other journalists may make, we know we're pretty safe.

KOPPEL: All right, Mr. Campbell, let's take a break.

When we return, we'll talk with former CIA official George Carver, who thinks this country needs much tougher laws to protect national security, and with New York Times' columnist Anthony Lewis, who strongly disagrees.

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KOPPEL: With us now live in our Washington Bureau is George Carver, a senior fellow at the Georgetown Center for

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Strategic and International Studies, and a former CIA Deputy Director for National Intelligence. And joining us in our Boston Bureau, New York Times' columnist and former London Bureau Chief, Anthony Lewis.

Mr. Carver, give me your best argument for having -- and I'm not saying it should be the National Security Act, or a secrets act, such as the British have. But give me your best argument for having something like that.

GEORGE CARVER: Well, Ted, I'm not sure that an act exactly like the 1911 act, modified in 1920 in Great Britain would pass constitutional muster in the United States. But as Mr. Justice Goldberg observed on the bench, the Constitution is not a suicide pact, which is something we all should remember in this age of thermonuclear ICBMs and rampant international terrorism.

I think the government needs a better arsenal for protecting legitimate secrets which, in the interests of the American people and even their survival in this particular age, need to be protected than it now has. We shouldn't go as far as our British cousins have done, but we need to go further than we have gone to date.

KOPPEL: Well, give me a sense of what you have in mind. What kind of protection do you think the American public needs in that regard?

CARVER: Well, we need at least some tightening, I think, of Section 792 and 793 of Title 18 of the U. S. Code, the so-called Espionage Statute, where to get a conviction now you have to prove knowing passage to a foreign power with intent to damage the United States. It's perfectly all right under the Espionage Statute to pass information to a newspaper, which then publishes it, and that newspaper's publications are then read by every general staff and government around the world, but you have to show that the person in question passed it to a foreign power himself before either of those statutes come into play. This is nonsense.

What I think we ought to do is extend Section 798 and make some form of unauthorized disclosure of certain types of information by certain people, *prima facie*, a crime, not necessarily a felony, but at least some form of criminal act.

KOPPEL: All right. Tony Lewis, you are, when it comes to this subject, one raw exposed nerve. Why?

ANTHONY LEWIS: Well, I start with the basic proposition that the United States has a system which tends toward open

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discussion. Of course there are some secrets. And my view is that we've done very well with an open society. We've done a lot better than Britain. We have gained strength while Britain has lost strength, in part, some such conservative organs as the Economist magazine think the cause of their secrecy-mindedness. And I don't see why we want to copy something which hasn't worked. It hasn't worked, incidentally, to stop real spies. We all know how many of those Britain has had.

So I'm against copying that system.

KOPPEL: What is it, Mr. Carver, that will ultimately protect us against a government using this not so much to keep genuine national security from getting to the public and through the public, or through the newspapers to our adversaries and enemies, but from simply protecting itself against its own acts of stupidity, or worse?

CARVER: Well, there's no theoretical perfection so long as the world is populated by less than perfect human beings. The best practical protection is to elect sensible governments and elect sensible people to office. But the point is that if you're striving for absolute theoretical purity, you're going to make a lot of very foolish practical mistakes.

KOPPEL: No, I'm not, and I'm not so naive as to believe that we can ever elect that kind of a government. But I guess that's what the founders of this country had in mind when they created these various balances back and forth. And one of those balances is the balance of the First Amendment, which, indeed, puts the emphasis, or seems to put the emphasis on, well, let the public know what's going on and let that fresh air kind of ventilate what's happening in government, and we'll take the chances that something bad might. What's the worst thing you've seen happen under this?

CARVER: I've seen publication of information in Aviation Week, which you can pick up for the price of a dollar, or whatever the going price of a copy of Aviation Week is, that I know the U. S. government would have had to spend, and has had to spend millions of dollars to try to collect from potential adversaries. To me this is rather silly. I think that with our fetish for openness we get completely carried away in such things as, for example, the Freedom of Information Act, which conveys its blessings impartially on U. S. citizens and non-citizens alike, and under whose terms every member of the Politburo and the KGB has just as much right to file FOIA requests as you or Mr. Lewis or I, or any of your listeners who are American citizens do.

LEWIS: You see, there's a great wolf crying practice

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by the United States government. With all respect to Mr. Carver, he knows perfectly well that no member of the Politburo has filed FOIA requests. I remember when the Pentagon....

CARVER: But quite a few people from the KGB have, though.

LEWIS: I remember when the Pentagon Papers case was on. The United States government alleged that if the New York Times was allowed to go on publishing that history of the Vietnam war, the sky would fall in, the country would be destroyed. Well, we were allowed to go on publishing, and nothing happened. And now the government says, well, that was just history. That's what it was all along.

They always exaggerate. They always tell you horror stories. But in fact, it's very hard to pin any down.

CARVER: With all due respect, the exaggeration isn't just on one side of the argument, Mr. Lewis. One problem that all of us have to wrestle with is there's no way of telling anything to the American people in the latter decades of the 20th Century as opposed to the latter ones of the 18th without simultaneously telling it to every general staff, government and intelligence service around the world. And this requires certain measures of protection that were not necessary when news moved with the speed of a horse or a sailboat and now it moves with almost instantaneous speed all over the globe.

LEWIS: On the other hand, it's also true, Mr. Carver -- I accept that. But it's also true that this is a much more militarized country in which national security plays an enormous part, and we spend billions on defense. It's extremely important for the public to have some knowledge in those policies and some role in deciding whether they are right, because mistakes are made especially in secret.

KOPPEL: Gentlemen, let me interrupt you for a moment because Mr. Campbell has one qualification that none of us has. He had to get up at four or five o'clock in the morning to come on this broadcast.

Mr. Campbell, what are your thoughts on hearing this debate?

CAMPBELL: I look in from outside and I see that power was the reason why Britain started its regime of secrecy all these decades ago. It came at the point of when Britain was building up an empire around the world and wanted to consolidate its power. And I think the drive to the new military strength of the United States has a lot to do with the drive simultaneously

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toward secrecy.

But I absolutely agree with Tony Lewis. I look in from outside. I see the United States strong and free and not in the least bit hampered or in danger, however irritating it may be to officials, who see those particular leaks that have been mentioned. And what we see from outside, with great jealousy from here, is that system of checks and balances which your constitution created.

KOPPEL: Mr. Carver?

CARVER: Well, his history is off. The Official Secrets Act was passed in 1911 when Britain's power was past its apogee and they were concerned about the imminence of a major war in Europe. And I think....

CAMPBELL: The first act was actually passed some 25 years before that, the very first Secrets Law.

CARVER: But I think the necessity for preserving certain secrets in order to, as the Constitution puts it, to provide for the common defense, is essential. I think Mr. Lewis and I....

CAMPBELL: I agree. I agree, because you yourself said we live in an imperfect world.

CARVER: And we must have a sense of balance. And Mr. Lewis and I might strike the balance in different ways, but at least I would hope we would agree that there is a legitimate issue to be discussed and that there is some sort of imperfect balance that no one is universally going to accept. It does need to be struck. And you're not going to do any good by taking a purist position in either direction.

KOPPEL: All right, speaking of balance, Tony Lewis, you have the last word. But we're down to our last half-minute.

LEWIS: Well, I just remember. I'd agree with Mr. Carver on that. But I remember an occasion when the CIA, like MI-5 just now, a few years ago was found to have committed some crimes at home and plotted assassinations of foreign leaders. I think it was good for the CIA, as well as the country, that those things came out and were cleaned up.

KOPPEL: Gentlemen, I think it is good that we have been able to hear from all of you. And I thank you, especially you, Mr. Campbell, for getting up so early to join us. Thank you very much.